

REMARKS

This amendment is in response to the Office Action dated November 19, 2003. Claims 1, 3-5, 7-11 and 20 are now in this case. Claims 1 and 20 are amended. Claims 12, 14-16 and 18 are canceled in view of their withdrawal from consideration following a restriction by the Examiner.

The Examiner has objected to the drawings under 37 C.F.R. § 1.83(a). Replacement Sheet of Figure 4A illustrates the multi-layer bag. This should not be considered new matter since the specification, as originally filed, referred to the bag being formed from "one or more layers." (See page 4, line 7.)

The Office Action objects to the specification as failing to provide the proper antecedent basis for claimed subject matter. Claims 1 and 20 have been amended to change from a "multi-wall" to a "multi-layer" paper bale. This phrase finds full support in the specification on page 4, line 7.

Claims 1, 3, 4, 7-11 and 20 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of U.S. Patent No. 4,541,227 to Coad et al. combined with U.S. Patent No. 1,713,341 to Kroemer and German Patent No. DE 3,416,710 to Lissner. The applicants respectfully disagree with the assessment of the prior art and its applicability to the claimed invention.

Specifically, Coad is directed to a bagging apparatus that packs multiple articles in a bale bag. In the example cited in Coad et al., prepackaged bags of dog food are loaded into a kraft bale bag. Although Coad does disclose loading multiple prepackaged bags into a bag, the operation of the bagging apparatus, and thus the requirements for the bale bag, are significantly different from that in the claimed invention. In Coad, a magazine 12 holds a plurality of flat folded bags 14 in a horizontal stack. (See Figure 1 and column 2, lines 52-54.) That is, the bags in Coad are lying on their side and are held in position by a rectangular frame 18. Figures 3-8 illustrate the use of the bag with the machinery of Coad. The bags are mounted in a horizontal orientation in the rectangular frame 18. In Figure 5, a single bag is extracted from the magazine and opened while still in a horizontal configuration. In Figure 6, the

prepackaged bags are loaded into the opened bale bag while still in the horizontal configuration. After the bale bag is loaded, the table is rotated such that the fully loaded bag is now in a vertical orientation, as shown in Figure 8.

Given the apparatus of Coad, there is no need for an aperture in the back portion of the bag nor a cutaway portion in the front of the bag to expose the aperture. Indeed, Coad teaches directly away from the bag of the claimed invention by disclosing bags in a horizontal configuration within a rectangular rack. There is no need for an aperture because the bags are not hung from a protruding member in a vertical orientation, but are mounted horizontally throughout the entire loading process until the very last step.

In contrast to the bag of Coad, Kroemer discloses a bag hung in a vertical orientation on a spindle. The bag of Kroemer was never intended for use in an automated process, but is used in a commercial establishment where merchandise is delivered in paper bags to the purchasers. (See column 1, lines 35-37.) In operation, the bags are designed to be removed individually by the user by grasping the bottom of a bag and pulling the bag from the spindle. (See column 3, lines 8-12.)

The bag of Kroemer is not intended for automated operation and discloses bags hanging in a vertical orientation on a spindle through an aperture. In contrast, Coad discloses bags for an automated process in which the bags are horizontally mounted in a magazine having a rectangular frame where there is no need for an aperture or for placing bags in a vertical orientation. Thus, the approach to bag design in each of these references are completely different and would not be combined in the manner suggested in the Office Action. There is simply no need to alter the bags in Coad to include the aperture of Kroemer. Similarly, Kroemer does not contemplate automated operation. The aperture in the bag of Kroemer has no place or function in the machine of Coad. Accordingly, the combination of Coad and Kroemer does not fairly suggest the claimed invention. The Office Action cites Lissner as teaching multiple paper layers to construct a bag. Lissner is a German patent, but the English language abstract discloses a large number of layers of paper that are folded over in a particular configuration to provide strength. Lissner does not teach or suggest the use

of an aperture in the rear portion of a bag nor disclose any structure that would suggest its application in an automated process or disclose any operation in which the bag is mounted in a vertical orientation. Thus, Lissner does not overcome the failings in the teachings of Coad and Kroemer. The combination of references cited in the Office Action does not fairly suggest the invention recited in the present application. It appears that the claims in the present invention are impermissibly used as a roadmap to find references where each reference individually suggests only a single aspect of the claimed invention. One skilled in the art would be unlikely to combine the references in the manner suggested in the Office Action because they are directed to such different applications.

Even if one were to combine the references in the manner suggested in the Office Action, it does not teach or suggest the claimed invention. For example, claim 20, as previously amended, recites *inter alia* "an aperture in the unfolded upper portion of the first opposing panel proximate the top portion with the first opposing panel having a continuous perimeter surrounding the aperture." In a previous telephone conference with the Examiner, the Examiner suggested such language to distinguish over Kroemer. Specifically, it should be noted that Kroemer has a slit extending from the top portion of the bag to the aperture. The purpose of the slit is to prevent tearing of the bag during the removal from the spindle. Kroemer states that the weight of the bag is supported by the tongue 24 when supported on the spindle. (See page 1, lines 109-111.) Such an arrangement would not work in the manner suggested in the Office Action. A multi-walled bag for an automated process cannot have a slit from the aperture to the top of the bag since the extra weight of the multi-layered bale would cause premature tearing and allow the bag to drop off of the spindle. The combination of references cited in the Office Action does not teach or suggest an aperture in a panel having a continuous perimeter surrounding the aperture, such as recited in claim 20. Accordingly, claim 20 is clearly allowable over the cited references.

Claim 1 previously included this feature, which was inadvertently deleted in an amendment. The present amendment adds this feature back to claim 1. Claim 1 recites *inter alia* "an aperture in the back panel proximate the top portion with the back

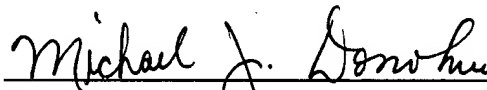
panel having a continuous perimeter surrounding the aperture." As discussed above with respect to claim 20, none of the references cited in the Office Action, taken alone or in combination, suggest the shipping container of claim 1. Accordingly, claim 1 is clearly allowable over the cited references. Claims 3-5 and 7-11 are also allowable in view of the fact that they depend from claim 1, and further in view of the recitation in each of those claims.

In view of the above amendments and remarks, reconsideration of the subject application and its allowance are kindly requested. The applicants have made a good faith effort to place all claims in condition for allowance. If questions remain regarding the application, the Examiner is invited to contact the undersigned at (206) 628-7640.

Respectfully submitted,

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A handwritten signature in dark ink, reading "Michael J. Donohue", is written over a horizontal line.

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